

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Scholastic Bus Service, Inc. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Years 1974 & 1975. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 2nd day of October, 1981, he served the within notice of Decision by certified mail upon Scholastic Bus Service, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Scholastic Bus Service, Inc.
c/o S. Zinder
98 Cutter Mill Rd.
Great Neck, NY 11021

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
2nd day of October, 1981.

Annice A. Hagelbend

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

October 2, 1981

Scholastic Bus Service, Inc.
c/o S. Zinder
98 Cutter Mill Rd.
Great Neck, NY 11021

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,
Kathy Pfaffenbach

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SCHOLASTIC BUS SERVICE, INC.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Franchise Tax on Business Corporations	:	
under Article 9-A of the Tax Law for the Years	:	
1974 and 1975.	:	

Petitioner, Scholastic Bus Service, Inc., 98 Cuttermill Road, Great Neck, New York 11021, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the years 1974 and 1975 (File No. 28077).

A formal hearing was held before Doris Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 18, 1981 at 1:15 P.M. Petitioner appeared by Samuel P. Zinder, Esq., Vice-President. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioner was entitled to exclude income derived from the rental of school buses in computing entire net income, by virtue of section 208.9(a)(4) of the Tax Law.

II. Whether petitioner and its sister corporation Pioneer Transportation Co. should be permitted to retroactively file combined franchise tax reports for the years at issue.

III. Whether petitioner was entitled to 1974 and 1975 New York net operating loss deductions based upon net operating losses sustained in 1976 and 1977.

FINDINGS OF FACT

1. On September 15, 1978, the Audit Division issued to petitioner, Scholastic Bus Service, Inc. ("Scholastic"), two notices of deficiency asserting additional franchise taxes due under Article 9-A of the Tax Law for the years 1974 and 1975 in the amounts \$12,999.00 and \$13,242.00, respectively.

2. For the years at issue petitioner filed separate New York State franchise tax reports; it did not include therein Pioneer Transportation Co. ("Pioneer"), its sister corporation. Petitioner's request for permission to file a combined report with Pioneer for 1976 was granted by the State Tax Commission; for that year and thenceforth, the two corporations filed on a combined basis.

3. Petitioner was incorporated under the laws of New York on May 11, 1972 by the shareholders of Pioneer for the singular purpose of purchasing, and then leasing to Pioneer, school buses. Pioneer had been unable to secure financing for the purchase of vehicles.

4. All of Scholastic's income for the years at issue was derived from its relationship with Pioneer. Pioneer's principal business, accounting for over ninety percent of its receipts, was the transportation of children to school, under contract with boards of education.

5. Scholastic and Pioneer shared business premises and had common officers. Scholastic's few employees also worked for Pioneer.

6. At Schedule B of its franchise tax reports for 1974 and 1975, petitioner showed income of \$152,668.00 and \$120,789.00, respectively, but excluded all of said amounts, relying upon the "school bus exclusion" in section 208.9(a)(4) of the Tax Law.

7. On or about April 4, 1980, petitioner filed two Claims for Credit or Refund of Corporation Tax Paid for 1974 and 1975, founded upon net operating losses sustained in 1976 and 1977 in the respective amounts of \$159,933.00 and \$120,253.00. (There existed no Federal net operating loss carrybacks to 1974 and 1975 for the reason that the losses incurred by petitioner in 1976 and 1977 were absorbed by other corporations with which petitioner filed consolidated Federal returns.) The carrybacks had the result of reducing income (disregarding the school bus exclusion) to zero.

CONCLUSIONS OF LAW

A. That subdivision 9 of section 208 of the Tax Law furnishes the definition of entire net income for Article 9-A purposes. Paragraph (a) thereof enumerates the permissible exclusions from entire net income and provides, in relevant part:

"Entire net income shall not include:

* * *

(4) income and deductions with respect to amounts received from school districts and from corporations and associations, organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, for the operation of school buses..."

The income petitioner derived from the leasing of school buses to Pioneer did not qualify for the above-quoted exclusion. The monies were paid over to petitioner by its sister corporation, not a school district, and constituted consideration for the rental, not operation, of the vehicles.

B. That, as articulated in the Matter of Walker Engraving Corporation, State Tax Commission, June 6, 1971, the filing of combined returns is not a statutory right on the part of the taxpayer. The detailed facts necessary to determine whether permission for combined filing should be sought from the

Commission are available to the taxpayer at the time annual franchise tax reports are due; and, except under unusual circumstances, the taxpayer has no need of an extended period to determine whether permission should be requested. An "accounting oversight" does not constitute such an extraordinary circumstance as would entitle petitioner to file retroactive combined reports with Pioneer. See also Matter of Carter-Wallace, Inc., State Tax Commission, June 5, 1981.

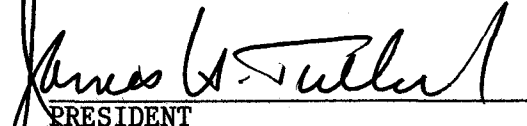
C. That Scholastic did not file a petition subsequent to the disallowance of its refund claims (if indeed such claims were disallowed by the Audit Division) or after the expiration of six months from the filing of the claims, in accordance with the procedure prescribed by subdivision (c) of section 1089. The State Tax Commission therefore lacks jurisdiction to determine the third issue raised.

D. That the petition of Scholastic Bus Service, Inc. is hereby denied and the notices of deficiency issued September 15, 1973 are sustained in full.

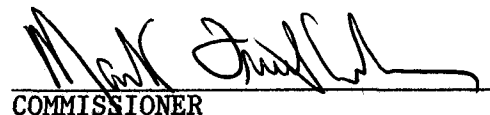
DATED: Albany, New York

OCT 02 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER